



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

PITTSFIELD SCHOOL DISTRICT

Complainant

v.

CASE NO. T-0250:10

DECISION NO. 95-78

PITTSFIELD EDUCATION ASSOCIATION,
NEA-NEW HAMPSHIRE

Respondent

APPEARANCES

Representing Pittsfield School District:

Jay C. Boynton, Esq.

Representing Pittsfield Education Association:

Jan Paddleford, UniServ Director

Also appearing:

Harry Mitchell, EAP, Pittsfield
Paul Moccia, Superintendent
Mary Jarvis, Pittsfield School District

BACKGROUND

The Pittsfield School District (District) filed unfair labor practice (ULP) charges against the Pittsfield Education Association, NEA-New Hampshire (Association) on June 21, 1995 alleging violations of RSA 273-A:5 II (c), (e) and (f) relating to a breach of contract when the Association attempted to grieve a non-arbitrable subject, the non-renewal of a non-tenured teacher. The Association filed its answer on June 30, 1995 after which this matter was heard by the PELRB on August 22, 1995.

FINDINGS OF FACT

1. The Pittsfield School District is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Pittsfield Education Association, NEA-New Hampshire, is the duly certified bargaining agent for teachers employed by the District.
3. The Association and the District are parties to a collective bargaining agreement (CBA) for the period September 1, 1993 until August 31, 1995. A successor CBA has since been negotiated. Article 6.1 of the 1993-95 agreement which is pertinent to these proceedings defines "grievance" as "a complaint by an employee or group of employees of the District certified to be represented by the Association...that there has been a personal loss or injury to the employee or group because of a violation, misinterpretation or misapplication of the provisions of this Agreement. In order to be considered, the grievance procedure must be initiated under this section by the employee or group within thirty (30) calendar days of its occurrence." Article 6.4 states what the grievance must contain once reduced to writing.
4. Article 8 of the CBA applies to employee evaluations. It contains ten sections, 8.1 through 8.10 inclusive, which address how evaluations shall be conducted, employees' rights as to access, rebuttal and consultative procedures concerning the evaluations, and employee access to personnel files. The Association claims that Exhibit No. 8, the " Handbook on Teacher Education" dated September 25, 1981, also controls the evaluation process. This document, consisting of some 35 pages, was not the product of negotiations between the parties. Since its adoption, it has been unilaterally modified by management. The Superintendent testified that he no longer believed it to be in effect. Section II (A) of this handbook provides that "in September of each year, each principal will hold a meeting to review and answer questions about the evaluation program with all professional personal, full time and part time. The purpose of this meeting is to provide all personnel...with an opportunity to understand the evaluation process. At this meeting,

the principal will assure that all personnel have received, and signed for receipt of a copy of the current Handbook on Teacher Evaluation." Former principal David Batchelder testified that he had not used this handbook in School Year 1994-95, did not distribute it as provided, above, and could not find receipts indicating that it had been received by teachers whom he supervised. This Handbook is not incorporated by reference into the CBA.

5. Article 12 of the CBA, titled "Printing and Distribution," provides in pertinent part, "the Board agrees to distribute copies of this Agreement to all employees certified to be represented by the Association.."
6. During the 1994-95 school year, Batchelder evaluated Steven Stefanik on three occasions, October 24, 1994, December 8, 1994 and February 6, 1995. Exhibit No. 6. Stefanik was a non-tenured biology and physics teacher hired days after the start of the 1994-95 school year to fill an unexpected vacancy. There is no evidence that he grieved any of the three foregoing evaluations. In accordance with RSA 189:14-A, Stefanik was sent a notice of intent not to renominate by Superintendent Moccia on March 17, 1995. Exhibit No. 3.
7. On March 23, 1995, Stefanik initiated a written grievance to Batchelder complaining that he had been denied "contractual rights and due process with regard to evaluation procedures." Exhibit No. 5. Among other assertions, the District is claiming that this document does not comply with Article 6.4 of the CBA relative to the requirement that the grievance set forth the date of occurrence and the specific sections of the agreement which have caused the employee "dissatisfaction."
8. On May 18, 1995, the foregoing grievance was presented to the Pittsfield School Board, Level 3 under the CBA. Part of the presentation made on that date asserted that Stefanik "was never oriented to the District's evaluation plan nor was he ever given a copy of the District evaluation handbook or the collective bargaining agreement as required, documents which set forth an employee's rights and obligations to the School District." Attachment B to ULP charge and testimony

of Harry Mitchell on behalf of the Association.

9. On or about June 16, 1995, Janet Paddleford, UniServ Director, on behalf of the Pittsfield Education Association, filed a demand for arbitration with the American Arbitration Association. It identified this dispute as a "failure to comply with evaluation procedures which led to non-renewal of teacher." It sought as a remedy that "evaluations conducted between September 1994 and March 1995 [be voided] and order re-evaluation of performance."
10. Notwithstanding the remedy referenced and sought in the demand for arbitration, Association proponent Paddleford and witness Mitchell insisted to the PELRB that the instant grievance arbitration proceedings were intended to address only the procedures used, or not used, in the evaluation process and contractual violations suffered by Stefanik, not his non-renewal or any deficiencies in the RSA 189:14A procedures associated with his non-renewal as a non-tenured teacher.

DECISION AND ORDER

We agree with the Association's position on the issue being litigated in this case, the adherence, or lack thereof, to the evaluation procedures and the CBA, as noted in Finding No. 10. The specific non-renewal of Stefanik cannot be grieved due to his status as a probationary teacher whose non-renewal is controlled by RSA 189:14-A. To the extent the relief requested would influence, modify, change or impact Stefanik's non-renewal, it is inappropriate.

The contract defines what constitutes a grievance. Finding No. 3, above. The Handbook is not a negotiated document or incorporated into the CBA. Therefore, any violation of the Handbook is not elevated to the status of a grievance as defined by the CBA. Thus, even if evaluators deviated from or ignored the Handbook as it applies to evaluations, preparation of documents, meetings with teachers or its distribution to teachers, these events would not fall under the definition of "grievance" as found in the CBA. Notwithstanding the desirability and efficiency of eliminating the confusion among the Superintendent and the principals as to the role of the Handbook in the evaluation process, this confusion, under the facts of this case, does not rise to the level of a ULP due to

the non-tenured status of Stefanik and the contractual definition of "grievance."

Having disposed of the foregoing, there remains only one outstanding issue of dissatisfaction, namely, the Article 12 allegation asserted by the Association relative to the need to distribute copies of the CBA to teachers. Batchelder's testimony to the PELRB established a prima facie case that Stefanik may not have been given a copy of the CBA. If proven, this breach would constitute a grievance as defined by Article 6.1. If the Association had filed their own complaint or a cross-complaint on this issue, they could have requested a finding of ULP and requested relief. They did not. Therefore, we will uphold the District's position on the non-grievability of all aspects except the alleged Article 12 violation. Any remaining procedural issues of non-compliance with Article 6 requirements are now merely matters of contract interpretation which we leave to the arbitrator, should the parties elect to pursue this matter to the arbitration level of the grievance procedure. Pursuit of any issue other than the Article 12 question pertaining to distribution of contract is barred by this decision and, if attempted, will constitute a ULP in violation of RSA 273-A:5 II (f).

So ordered.

Signed this 12TH day of September, 1995.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members E. Vincent Hall and William Kidder present and voting.